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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/090,327      | 03/04/2002  | Marcus David Shelby  | 71218               | 5527             |

7590 07/01/2004

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EXAMINER

MCDOWELL, SUZANNE E

ART UNIT PAPER NUMBER

1732

DATE MAILED: 07/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/090,327

**Applicant(s)**

DAVID SHELBY ET AL.

**Examiner**

Suzanne E. McDowell

**Art Unit**

1732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10-22 is/are rejected.
- 7) ☒ Claim(s) 8 and 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>5/17/02 and 12/27/</u>  | 6) <input type="checkbox"/> Other: ____                                     |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3-7, 1-12, 14, 15, 19, and 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Watanabe (JP 01-30729). Watanabe discloses a method for labeling by positioning a barrier film (14) over an extruded parison (12), heating the film to shrink it to the parison, then blow molding to form a container with a film thereon. Regarding claims 4, 6 and 7, the film is formed from polyamide and modified polyethylene, i.e., a functional additive. Regarding claim 12, the film can have a barrier property. Claim 14 and 15, see Figure 1.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe (JP 01-30729) in view of Anderson et al. (US Patent 6,569,276). Watanabe discloses a method for labeling by positioning a barrier film (14) over an extruded parison (12), heating the film to shrink it to the parison, then blow molding to form a container with a film thereon. Watanabe does not teach that the film is distortion printed, that it is held in place, or that it is from oriented film stock and the container is contoured. Anderson et al. teaches a method of in-mold labeling to enhance the surface of a contoured container by holding a label in place and having the label stretch during blow molding (column 2, lines

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28-50). It would have been obvious to a person of ordinary skill in the art at the time of the invention to use the method taught by Anderson et al. to modify the method taught by Watanabe to form a contoured container with a label thereon, where the label is not distorted by the blow molding.

5. Claims 13 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe (JP 01-30729) in view of Slat (US Patent 4,662,528). Watanabe discloses a method for labeling by positioning a barrier film (14) over an extruded parison (12), heating the film to shrink it to the parison, then blow molding to form a container with a film thereon. Watanabe does not teach that the barrier layer is EVA or metazylene diamine, or that the process is a stretch blow molding one. Slat teaches a stretch blow molded plastic container with a label thereon, where the container has at least one barrier layer that may be formed of EVA. It would have been obvious to a person of ordinary skill in the art at the time of the invention to use the method taught by Slat to modify the method taught by Watanabe form a contoured container with a label thereon, where the label is not distorted by the blow molding.

#### ***Allowable Subject Matter***

6. Claims 8 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

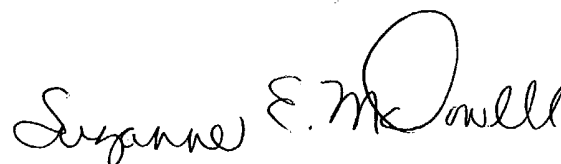
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suzanne E. McDowell whose telephone number is (571) 272-1205. The examiner can normally be reached on M, W, Th 6:30-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael P. Colaianni can be reached on (571) 272-1196. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SEM  
June 28, 2004

A handwritten signature in black ink, reading "Suzanne E. McDowell". The signature is written in a cursive, flowing style.

SUZANNE E. MCDOWELL  
PRIMARY EXAMINER